



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA-2011-E-0380 and FDA-2011-E-0389]

Determination of Regulatory Review Period for Purposes of Patent Extension; VIIBRYD

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VIIBRYD and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit electronic comments to <http://www.regulations.gov>. Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

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Food and Drug Administration,
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301-796-3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VIIBRYD (vilazodone hydrochloride). VIIBRYD is indicated for the treatment of major depressive disorder. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VIIBRYD (U.S. Patent Nos. 5,532,241 and 7,834,020) from Merck Patent

GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated June 22, 2011, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VIIBRYD represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VIIBRYD is 4,778 days. Of this time, 4,472 days occurred during the testing phase of the regulatory review period, while 306 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective: December 24, 1997. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on December 24, 1997.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act: March 22, 2010. FDA has verified the applicant's claim that the new drug application (NDA) for VIIBRYD (NDA 22-567) was submitted on March 22, 2010.

3. The date the application was approved: January 21, 2011. FDA has verified the applicant's claim that NDA 22-567 was approved on January 21, 2011.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its

applications for patent extension, this applicant seeks either 67 days or 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see ADDRESSES) either electronic or written comments and ask for a redetermination by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 3, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see ADDRESSES) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 19, 2012.

Jane A. Axelrad,

Associate Director for Policy,

Center for Drug Evaluation and Research.

[FR Doc. 2012-8341 Filed 04/05/2012 at 8:45 am; Publication Date: 04/06/2012]